

**METROPOLITAN NASHVILLE-DAVIDSON COUNTY
TRANSPORTATION LICENSING COMMISSION**

**Minutes of
April 27, 2010**

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in regular session on this date at the Metropolitan Courthouse. The Commissioners present were Acting Chair Mary Griffin and Commissioners Jennifer Brundige, Quenton White, and Ed Whitmore (4). Also attending were Metro Legal advisor Corey Harkey; Commission staff members Milton Bowling, Walter Lawhorn and Lisa Steelman; and Brian McQuiston, Director-Executive Secretary to the Commission.

Acting Chair Mary Griffin called the meeting to order. She led the Pledge of Allegiance and read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

The minutes of the March 23, 2010 meeting were approved.

**PUBLIC HEARING: APPLICATIONS TO TRANSFER EMERGENCY WRECKER
SERVICE LICENSE AND ZONE**

Director McQuiston reported that the public hearing was to determine who would be assigned the license to operate the emergency wrecker zone then operated by Cotton's Towing, owned by Robert and Joyce Dean. He noted that the Dean's had owned and operated Cotton's Towing since November 2006; and that they desired to sell the company to Alex Miller and Kio Phomthisene. He stated that the prospective new owners had submitted an application for transfer of the emergency wrecker zone license; and that applications also had been received from Tow Pro owners Doug and David Williams, and from Earl Garvin Jr., owner of Easy Towing. He stated that all applications were complete and in order. The director noted that in the case of transfer requests involving transfer of business assets, the old and new owners were advised to await the Commission's decision on the license transfer request prior to closing the business deal. He added that, while the Commission in past transfers had expressed interest in the effect of a license transfer on employees, the Commission staff was primarily concerned about the experience level of any prospective emergency zone operator and resulting impact on public safety.

Robert and Joyce Dean appeared. Mr. Dean stated that Mr. Miller and Mr. Phomthisene were purchasing the property leased by Cotton's. He stated that the agreement for the sale of the company included continued employment for Cotton's employees, and that he would continue to manage the operations of the company until the new owners were ready to assume that responsibility. **Commissioner Jennifer Brundige** asked if there was a contract that specified his continued employment, or if there was a non-compete agreement; Mr. Dean responded that there was a non-compete agreement. He added that there was no contract for his employment, but that he had verbally agreed to stay for up to one year. **Commissioner Quenton White** asked how long the non-compete

clause would remain in effect; Mr. Dean responded that the non-compete clause indicated only that he would not open a new wrecker service within five miles of the Cotton's location. When questioned about the experience level of the prospective buyers, Mr. Dean stated that Mr. Phomthisene had worked in the automotive business for about 30 years; but he noted that the staff at Cotton's was capable of managing day-to-day operations. **Acting Chair Mary Griffin** stated that the prospective owners were present and would be called to appear.

Alex Miller and Kio Phomthisene appeared and responded to Commissioners' questions. **Commissioner Brundige** asked if they understood the requirements for emergency wrecker service zone operators; Mr. Miller explained that he understood the priority for clearance, especially considering that Interstate 24 was in his zone. He stated that he understood the requirements of the law for security of towed vehicles and notification of owners and lien holders. **Commissioner Brundige** noted that cooperation among the emergency companies was important for the success of the emergency wrecker system as a whole; Mr. Miller stated that he understood this, and intended to be a team player. Inspector Bowling asked about intentions to perform nonconsent towing from private property; Mr. Miller stated that he would be willing to do this. Inspector Bowling advised that this area was an area that posed a great risk for illegal activity. **Commissioner White** questioned Mr. Miller and Mr. Phomthisene about the management and operational roles each would perform. Mr. Phomthisene stated that he would continue to operate his car repair facility at the site. **Acting Chair Griffin** stated that this was not just another business opportunity. She stressed that clearance of accidents from the roadways is a dangerous job, and that safe, quick clearance is critical to reduce the risk of injury or death to motorists. Mr. Miller stated that he was relying on the experienced employees at Cotton's.

David Williams, co-owner of Tow Pro, appeared. He stated that Tow Pro already had ten years of experience operating an emergency wrecker service zone, and that co-owner Doug Williams had been in the wrecker business since 1969. He explained that the company was ready for expansion. He stated that the company would hire any qualified employees of Cotton's. He noted that Tow Pro would be looking for a property within the zone to operate as a storage lot. In response to questions from Inspector Bowling, Mr. Williams stated that Tow Pro had heavy-duty wreckers, including a Class C rotator; he added that the company would move the rotator to the new zone. He stated that the company already had tow trucks staged in the vicinity to support other customers, and could assume responsibility for the new zone almost immediately. **Commissioner Ed Whitmore** noted the distance from the current Tow Pro storage lot to the Cotton's zone, and asked where the company would be able to store vehicles, if approved. Mr. Williams responded that they were looking a 2-3 locations in the Antioch area; but that the company would be able to temporarily store vehicles at its current Lloyd Avenue lot until a new lot could be secured. **Commissioner White** asked if they would not consider purchasing the Cotton's assets; Mr. Williams responded that they had not been contacted by the Dean's until the arrangements had already been made with Mr. Miller and Mr. Phomthisene. He stated that Tow Pro might purchase a couple of additional rollbacks, but that the company already had fifteen other wreckers. Director McQuiston asked if Mr. Williams understood that the new licensee would have to operate independently from two locations; and would not be able to share wrecker equipment with Tow Pro. Mr. Williams stated that he understood this.

Earl Garvin, Jr., owner of Easy Towing, appeared. He provided a picture of the company's lot. He noted that he had ten years of experience as operator of Easy Towing. He pointed out that his company already towed for the police and highway patrol on the LaVergne rotation list, and as such he understood that higher standards were expected for companies that tow for the police. He noted that Easy Towing had performed nonconsent towing from private property for several years, with a record of no complaints brought to the Commission. He described the facility that the company intended to use, and stated that the only requirement remaining was the paving of the lot. Responding to questions, Mr. Garvin stated that the lot was zoned Industrial, and that obtaining a Final Use & Occupancy permit would be possible within a relatively short period, weather permitting. He stated that he would consider purchasing equipment and hiring employees from Cotton's. Inspector Bowling asked if he would relocate Easy Towing to Davidson County even if he was not awarded the zone; Mr. Garvin responded that he would.

Acting Chair Griffin opened the meeting for public comment.

John Graham, owner of Chapman's Wrecker Service, spoke in favor of transferring the license to Mr. Miller and Mr. Phomthisene.

John Miller, wrecker driver for Easy Towing, stated that Easy Towing worked very hard for its customers, and he supported the transfer to Easy Towing.

There was no other public comment, and the hearing was closed.

Director McQuiston asked Commissioners to ensure that the effective date of the transfer was clear, so that notifications could be made to the Emergency Communications Center, and so that emergency wrecker support would not be interrupted. He also clarified that if the transfer were to be awarded to a company that had another location, that company would not be allowed to use the same wreckers at both locations; each site would be required to operate independently. **Acting Chair Griffin** asked if there were any complaints against the companies that should be considered; the director responded that any complaints had been dealt with long ago, and that there had been no complaints against any of the applicants for many months.

Inspector Bowling voiced concerns about nonconsent towing from private property, and noted that a new company would be tempted to get into that business. He clarified that any emergency wrecker service also would be eligible to perform nonconsent tows from private property.

Commissioner Brundige asked the Dean's about their intentions. Mrs. Dean stated that if the deal with Mr. Miller and Mr. Phomthisene did not go through they would prefer to continue operating Cotton's Towing and retain the zone. **Commissioner White** asked Mr. Garvin if Easy Towing could be effective without purchasing more equipment; Mr. Garvin responded that the company could effectively handle the zone with its current equipment; but that he would be willing to buy equipment from Cotton's. **Commissioner Brundige** stated that she understood that the Dean's had arranged for the sale of their company, but that she had reservations about entrusting a zone to an untested operator, and Mr. Dean's future with the company was not assured. She noted that Tow Pro had a good track record. **Commissioner White** expressed concern about the impact of a decision on the Dean's and their employees. **Commissioner Whitmore**

asked about the property lease, to determine whether the new owners would still be there in a few years. Mr. Phomthisene responded that the company intended to stay there.

Commissioner Brundige moved to approve transfer of the license and zone to Cotton's Towing, under the ownership of Mr. Miller and Mr. Phomthisene. **Commissioner White** seconded, and the motion passed (3-0).

APPLICATIONS FOR WRECKER DRIVER PERMITS:

Norman Moore: Mr. Moore did not appear. **Commissioner Jennifer Brundige** moved to disapprove his application. **Commissioner Ed Whitmore** seconded, and the motion passed (3-0).

Director McQuiston stated that the manager of ALCAR National Recovery had requested that the applications of Jerry Anderson and Michael Norris be deferred, as neither was to be available for this meeting. **Acting Chair Mary Griffin** directed that they be deferred.

Sean Griffin: Mr. Griffin appeared. Director McQuiston reported that he had applied to drive for Anchor Towing & Recovery. He stated that the background check had confirmed a March 2010 arrest for delivery of a controlled substance. He noted that Inspector Bowling had also cited Mr. Griffin for two wrecker-related violations. He stated that Mr. Griffin had made a full disclosure, but that the drug-related offense was still an open charge. **Acting Chair Mary Griffin** asked Mr. Griffin to comment. He responded that he had been advised not to comment on the drug charge, but stated that he had a court date in May. **Acting Chair Griffin** noted that it would likely be 4-6 months before the case could be disposed. Mr. Griffin stated that he had held a permit in the past. No one from Anchor Towing & Recovery appeared. Following discussion, **Commissioner Quenton White** moved to disapprove his application, with the understanding that Mr. Griffin could reapply after the case was disposed. **Commissioner Ed Whitmore** seconded, and the motion passed (3-0).

Stacy Mullins: Mr. Mullins appeared with Jim Mitchell, owner of Dad's Towing. Director McQuiston reported that Mr. Mullins had 1996 and 1997 charges on his background check. Mr. Mullins noted that these had been disclosed on the back of his application, and that he had served his sentence. Mr. Mitchell stated that he had done a thorough check on Mr. Mullins' work history, and had hired him about a month earlier as a mechanic. He stated that he would be willing to have him come to work for Dad's. **Commissioner Jennifer Brundige** moved to approve the application. **Commissioner Quenton White** seconded, and the motion passed (3-0).

OTHER BUSINESS:

Director McQuiston announced the appointment of Brian Winfrey to the Commission.

The director reminded Commissioners that the election of a new Vice Chair would be

included on the May meeting agenda.

The director informed Commissioners that the bill for the new ordinance to regulate non-taxi motorized passenger vehicles for hire would be introduced at the end of the week. He stated that it would be announced by email to stakeholders and posted on the Commission's web site.

Director McQuiston commended Inspector Lawhorn for completion of the annual taxicab inspection program. He noted that 540 taxicabs had been inspected; and that the Inspectors were beginning to verify completion of necessary repairs identified during the initial inspections.

Director McQuiston commented on recent reports related to an investigation citing inaccurate or incomplete taxi company dispatch records. He stated that a more complete investigation of records should also consider drivers' daily manifests. He noted that without improved technology, the accuracy and completeness of company records were dependent on driver reporting. The director stated that spot-checking of records was possible. **Acting Chair Mary Griffin** asked requiring GPS-based dispatch systems. Director McQuiston stated that some companies already had them. He noted that these were expensive, and that it could require an ordinance amendment could be necessary to require them.

There was no further business, and the meeting was adjourned.

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair